XII-189 (Jail) C J.P.R.-9-94

CF0000062027

Cr A. 1145/99 (2)

APPEAL OF PRISONER

No बन्दी क्रमांक 1762/59 Name उमाशंकर मिश्रा

Father's name स्व० दा० लाल मा० शारदा पाण्डेयपारा जि० बिलासपुर (मध्य प्रदेश)

Residence उ.ट.२ मा.क.नि. Age 36 वर्ष

Sentenced to आजीवन कठोर कारावास on 22.2.99

Under Section ३०२/३४ by 7th A.S.J. Bilaspur (M.P.)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement संलग्न

2 Date on which copy received

3 Date on which Appeal sent

4 Whether the prisoner wishes to be represented or not हाँ

No बन्दी क्रमांक 1762/59 Name उमाशंकर पि० स्व० दा० लाल मिश्रा

Confined in केन्द्रीय Jail बिलासपुर (मध्य प्रदेश)

No. Dated 9.4.1999

Forwarded to the रजिस्ट्रार महोदय उच्च न्याया० जबलपुर (मध्य प्रदेश)

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

उपकोष अधिकारी,
केन्द्रीय जेल बिलासपुर,
बिलासपुर (म०प्र०)

JAIL SUPERINTENDENT,
CIRCLE JAIL BILASPUR (M.P.)
Superintendent
Jail

Date of receipt in Office

Date of receipt of record to accompany the

Memo of Appeal to the Appellate court

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.R.A. 1445 / 99 **सन्** / **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench:

Hon'ble Shri V.K. Shrivastava &
Hon'ble Shri Dhirendra Mishra, JJ.

02-11-2006

Shri Alok Nigam, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri D.K. Gwalre, Deputy Government Advocate for the State.

Oral judgment dictated on *Dais*.

Per Dhirendra Mishra, J.

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure as he has been convicted under Section 302 of the Indian Penal Code by learned 7th Additional Sessions Judge, Bilaspur, in Sessions Trial No.433/98 vide his judgment dated 22-2-1999, for causing death of Anil Kumar, and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo imprisonment for six months.

(2) At the outset, the sessions trial was conducted by the accused himself on behalf of the defence for the reasons given in paragraph 2 of the judgment.

(3) The case of the prosecution, in brief, is that deceased Anil Kumar was real brother of wife of the appellant namely Pushpa Bai. Ram Kumar Mishra (PW-2), who is brother of the appellant, lodged First Information Report on 23-8-1998 at about 7.15 a.m. in the Police Station Chakrabhata

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

mentioning therein that deceased Anil Kumar had gone to the house of the appellant to bring his wife Pushpa Bai, in connection with *Teeja* festival, however, the appellant was not inclined to send his wife and therefore, the deceased stayed in the house of the appellant. In the intervening night of 22nd/23rd August, 1998 at about 3.00 a.m., the appellant assaulted the deceased with a knife on his neck causing grievous injuries who succumbed to the injuries. After some time Narmada Prasad, nephew of the appellant, who resided in the said house woke up after hearing some noise and raised an alarm. On hearing his shouts, the complainant who resides nearby went to the house of the appellant and on being asked Narmada Prasad said that Uma Shankar has killed his uncle by knife and at that time, the complainant found that the appellant was standing there with a knife on his right hand and torch on the left hand. On being asked as to why he has killed his brother-in-law, he replied that he has killed and whoever will come near him he shall kill him also.

(4) On the basis of this information, offence under Section 302 of the IPC was registered and started investigation. Apart from registering FIR (Ex-P/2), merg intimation (Ex-P/1) was also registered on the basis of information given by the complainant. During investigation inquest over the dead body was performed in the presence of witnesses and report as per Ex-P/4 was prepared. Body was sent for autopsy to Primary Health Centre, Chakrabhata where Dr. A.K. Sanyal (PW-8) conducted the postmortem and submitted his report vide Ex.P/15. In the report, the Doctor found one longitudinal incised wound above thyroid cartilage of

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	size 1½ x ½ x 2 ½ cm deep resulting in cutting of blood vessels, skin and underline muscle and one oblique incised wound with abrasion below thyroid cartilage of size 2 x 13½ cm, abrasion of size 12 x ¼ superficial and resulting into cutting of trachea, blood vessels and underline skin muscle. The Doctor opined that cause of death was due to hemorrhage and shock. Site plan (Ex.P/5) was got prepared by Halka Patwari. J.P. Yadav (PW-7) also prepared the spot map vide Ex.P/6-A. Blood stained soil was collected nearby wall and plain soil was taken into possession from the spot vide Ex-P/7. Blood stained beddings and bed sheet were taken into possession vide Ex-P/8. On the basis of memorandum (Ex-P/9) given by the appellant a torch, the weapon of offence knife, a cotton gamcha stained with blood, an used bag were recovered vide Ex-P/10. The reply given by Dr. A.K. Sanyal (PW-8) to the query of Ex-P/11 is marked as Ex-P/16. In the said reply, the Doctor submitted that the injury present over the person could be caused by knife, however, he advised to send the seized gamcha and handkerchief to Serologist for chemical analysis. (5) After completion of the investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate First Class, Bilaspur, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge received the case on transfer for trial. (6) Charge sheet under Section 302 of the IPC was framed against the appellant who abjured his guilt. The prosecution in order to establish the charge against the accused examined nine witnesses. Thereafter	

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statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him in the prosecution case and pleaded that he has been falsely implicated in this crime by his brothers and his wife.

(7) Learned Additional Sessions Judge after hearing the accused/ appellant and Additional Public Prosecutor, convicted and sentenced the accused/appellant as mentioned above.

(8) The fact of homicidal death of Anil Kumar is not disputed by learned counsel for the appellant. Even otherwise, from perusal of statement of Dr. A.K. Sanyal (PW-8) and autopsy report (Ex-P/15) where the injuries have been found on the person of the deceased and where the Doctor has opined the cause of death was hemorrhage due to shock, therefore, the homicidal death of deceased is established.

(9) Learned counsel for the appellant submits that there is no eye witness to the incident, the conviction of the appellant is based on extra judicial confession and other circumstances appearing in the trial, however, the evidence of extra judicial confession is a week type of evidence and considering the fact that at the time of incident the appellant was not present there, where the deceased was sleeping some other persons were present there. The Court below was not justified in acting upon the sole evidence of extra judicial confession in convicting the appellant. He further submits that the case of the prosecution is improbable and there was no motive to the appellant to cause the death of

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the deceased. The motive of the appellant that he was not inclined to send his wife with the deceased was not sufficient for causing death of the deceased by the appellant.

(10) On the other hand, learned counsel for the State referring to the statements of the witnesses who are real brothers/wife of the appellant, submits that the totality of the circumstances are taken together coupled with the extra judicial confession of the appellant before his brother. The prosecution has been able to establish the case without beyond reasonable doubt and there is no illegality or infirmity in the impugned judgment of the trial Court.

(11) We have perused the impugned judgment as also the ocular and documentary evidence available on record. The FIR has been lodged by the brother of the appellant naming the appellant is the perpetrator of the offence. This has been proved by Ram Kumar Mishra (PW-2), who has stated that when he was sleeping in his house, he heard the noise of "*killed killed*" and the noise was emanating from the house of the appellant. He woke up, went to the house of the appellant and saw that the door of the drawing room of the appellant was opened, he found his mother Tirtha Bai, Sister Ramkumari, nephew Narmada Prasad, Rama Shankar etc. were present there. His brother Bavdhatta was also sleeping there and the body of Anil Kumar almost dead was lying who had sustained various injuries over his neck and he was slow in his breathing. The accused was not present in the room. Injured Anil Kumar was brought to the courtyard and was placed on another cot; they went for arranging

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tractor, however, in the meanwhile, Anil Kumar died. He has also stated that the room of the accused is adjacent to the courtyard and the accused was present there. He saw the accused in agitated condition, he was having a torch in his hand and he had placed the knife in the room. On being asked as to why he has killed Anil Kumar, the accused did not talk and thereafter he proceeded for Police Station Chakrabhata with Kotwar and lodged merg intimation (Ex-P/1) and FIR (Ex-P/2). In the cross-examination, he has admitted that he has not seen the incident personally and has not seen the blood stains over the knife.

(12) Rama Shankar (PW-3), who is also younger brother of the appellant, has stated that Anil Kumar came there to take his sister Pushpa, wife of the appellant, however, the appellant did not sent Pushpa with him. Deceased slept in the drawing room of the appellant's house in the night where brothers of appellant including this witness were also sleeping. Around 3.00 in the night, he woke up after hearing some noise and found his nephew shouting, however, he was not able to understand his shouts and saw Anil Kumar drenched with blood who died after some time while they were arranging tractor to take him to hospital. When they asked the accused as to who has killed Anil Kumar to that the accused had replied that "*I have killed him*". The accused also informed that he killed Anil Kumar with knife. The appellant could not elicit anything in the cross-examination of this witness, which discredits the version given by him or makes his statement doubtful.

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	(13) Similar is the statement of Bavdhatta (PW-4), the brother of the appellant, who was also sleeping in the same room, has stated in paragraph 6 of his statement that he saw the accused ran away to the courtyard and he was washing the knife near the gate of his room. (14) Ku. Chandrakanta (PW-1), daughter of the appellant, aged about 7 years, has also stated that in the night of the incident Anil Kumar Tiwari, her maternal uncle, had come to their home and slept in the sitting room on the cot. Elder brother Narmada, uncle Rama were also sleeping in that room. Her father was sleeping in his room. In the morning, she saw that Anil Kumar was lying dead and he had sustained injuries over his neck. Her mother was saying in the morning that her maternal uncle has been killed by her father. (15) Pushpa Bai (PW-5), wife of the appellant has also stated that in the night of the incident she along with her husband and daughter Chandrakanta was sleeping in their room with small child Deepak, whereas Anil Kumar, Rama Shanakar, Bavdhatta and Narmada were sleeping in the drawing room. At about 2 to 3'O clock in the night, she woke up after hearing noise. She found that her husband was not present at that time in the room and she heard the noise coming from verandah that murder has taken place. She has also stated that when she went to the drawing room she found her brother Anil Kumar in injured condition and the accused who was having a knife and a torch in his hands and she heard that Narmada telling accused that he should have not killed Anil.	

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(16) Narmada Mishra (PW-9), the nephew of the appellant, who was admittedly present in the room where the deceased was sleeping, has stated that around 2.30 to 3.00 in the night he woke up and saw that light of a torch, was falling on his face, which was coming from outside lane and when the torch was put off, he saw accused Uma Shankar was holding the torch, however, he did not see anything in his hands. In paragraph 6 of his statement, he stated that the accused was standing in the courtyard with a knife in his hand.

(17) Thus from the evidence of the above witnesses, it is established that the deceased had come to the house of the appellant and slept there in the night in the drawing room. At 2.00 to 3.00 in the night when wife of the appellant woke up after hearing noise, she found that the appellant was not present in his room, when she went out, she found the appellant with a knife and torch in his hands. This is also the version of the other witnesses that immediately after the incident, the appellant was standing there with a knife in his hand and he was trying to wash the knife with water. Further considering the extra judicial confession of the appellant, which he made voluntarily before Rama Shankar (PW-3), brother of the appellant, the involvement of the appellant in the crime in question is established. The witnesses examined by the prosecution are real brothers, wife and daughter of the appellant; therefore, there was no reason for these persons to implicate the appellant falsely in the crime. From the cross-examination of these witnesses, the appellant could not demolish their version.

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	(18) On the basis of the aforesaid discussion, we are of the considered opinion that the prosecution has been able to establish the charges against the accused with the help of the above evidence and the involvement of the accused in the crime in question is established beyond reasonable doubt. (19) In the result, the appeal is devoid of substance, which deserves to be dismissed and is accordingly dismissed. Sd/- L.C.BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge

Gowri

(पीछे देखिये)